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IN THE

Supreme Court of the United States

DAIMLERCHRYSLER AKTIENGESELLSCHAFT,
Petitioner,

v.

SCOTT OLSON, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATE OF KAREN L. OLSON, AND VICKIE OLSON,
Respondents.

On Petition for a Writ of Certiorari to the Texas Court of Appeals, Third Appellate District

BRIEF *AMICI CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE ORGANIZATION FOR INTERNATIONAL INVESTMENT, AND THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

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1788

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
BRIEF *AMICI CURIAE* 1
INTERESTS OF THE *AMICI CURIAE* 1
SUMMARY OF THE ARGUMENT 3
ARGUMENT 4
I. Absent Extraordinary Circumstances, Jurisdictional Analysis Must Respect the Corporate Form 5
II. Corporate Conduct Only Loosely Connected to the Forum Cannot Support General Jurisdiction 11
CONCLUSION 13

TABLE OF AUTHORITIES

CASES

Asahi Metal Indus. Co. v. Superior Ct. of California, 480 U.S. 102 (1987) 4

Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333 (1925) 6, 9

Conner v. ContiCarries & Terminals, 944 S.W.2d 405 (Tex. App. 1997) 6

Cottman Transmission Sys. v. Martino, 36 F.3d 291 (3d Cir. 1994) 12

Daimler-Benz Aktiengesellschaft v. Olson, 21 S.W.3d 707 (Tex. App. 2000) 3, 7, 9

Fandel v. Arabian Am. Oil Co., 345 F.2d 87 (D.C. Cir. 1965) 12

Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984) 9, 10

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 5

Jazini v. Nissan Motor Co. Ltd., 148 F.3d 181 (2d Cir. 1998) 8

Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) 9

United States v. Bestfoods, 524 U.S. 51 (1998) 6, 9

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 4, 5, 9

STATUTES & REGULATIONS

15 U.S.C. § 1114 12

RULES

Supreme Court Rule 37.2(a) 1

Supreme Court Rule 37.6 1

OTHER AUTHORITIES

McCarthy on Trademarks & Unfair Competition (1999)..... 12

BRIEF *AMICI CURIAE*

Pursuant to Rule 37.2(a) of the Rules of this Court on written consent of all parties filed with the Clerk of the Court concurrently with this brief, the Chamber of Commerce of the United States, the Organization for International Investment, and the National Association of Manufacturers respectfully submit this brief *amici curiae* in support of Petitioner seeking a writ of certiorari to the Texas Court of Appeals, Third Appellate District.[1]

INTERESTS OF THE *AMICI CURIAE*

Amici curiae are business associations that have a substantial interest in ensuring stable and predictable legal regimes affecting the conduct of international business affairs.

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing an underlying membership of nearly three million U.S. businesses and organizations of every size, in every business sector, and from every region of the country. While the Chamber's membership includes most of the country's largest companies, 96% of its members are small businesses with fewer than 100 employees. Chamber members transact business in all or nearly all of the states of the United States, as well as in a large number of countries around the world. An important function of the Chamber is to advocate its members' interests in matters of national

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[1] Pursuant to Supreme Court Rule 37.6, *amici* state that no person or entity other than *amici,* their members, or their counsel made a monetary contribution to the preparation or submission of this brief. Further, no counsel for any Petitioner or Respondent authored this brief in whole or in part.

concern before the courts, the United States Congress, the Executive Branch, and independent regulatory agencies of the federal government.

The Organization for International Investment ("OFII") is the largest business association in the United States representing the interests of U.S. subsidiaries of multinational companies. OFII's member companies operate in thousands of locations throughout the United States, and are affiliated with companies transacting business around the world. As such, their members have a keen interest in preserving the doctrinal boundaries of jurisdiction, lest their U.S. operations become conduits for unlimited jurisdiction over their overseas affiliates.

The National Association of Manufacturers ("NAM") is the nation's oldest and largest broad-based industrial trade association. Its nearly 14,000 member companies and subsidiaries, including 10,000 small manufacturers, employ approximately 85% of all workers in the U.S. manufacturing sector and produce more than 80% of the nation's manufactured goods. An additional 158,000 businesses are affiliated with the NAM through its Associations Council and National Industrial Council.

Amici view the jurisdictional ruling at issue in this case as a serious threat to their members' interests in a predictable legal environment for business and investment. The reasoning of the decision below would vastly increase *amici*'s members exposure to suit, including in jurisdictions with which they have no sustained or regular contacts, simply by virtue of the national or multinational scale of their corporate operations.

SUMMARY OF THE ARGUMENT

DaimlerChrysler Aktiengesellschaft has petitioned for a writ of certiorari to the Texas Court of Appeals, Third Appellate District, on the grounds that the court's decision upholding general jurisdiction over the German company, *Daimler-Benz Aktiengesellschaft v. Olson*, 21 S.W.3d 707 (Tex. App. 2000) (Pet. App. 1a-29a), conflicts with this Court's precedents and is emblematic of confusion in the lower courts concerning the due process limits on "general" and "specific" jurisdiction over nonresident defendants. *Amici curiae* agree with the arguments advanced in the Petition, and urge this Court to issue the writ of certiorari.

Amici file this brief, however, because they are particularly concerned about the implications of certain aspects of the decision below for the conduct of global business. They are alarmed by the Texas court's "alter ego" analysis, which imputed a subsidiary's forum contacts to an indirect corporate parent for jurisdictional purposes *without any* of the indicia that would ordinarily permit courts to disregard their separate corporate existences. The court relied instead on factors such as the global scope of the corporate family's business and the parent company's use of consolidated financial statements—features common to almost every multinational corporation today—to find that the nonresident parent could be haled into Texas courts to defend any action, whether or not related to its (nonexistent) Texas contacts.

The Texas courts' disregard for the bedrock principle of respect for the corporate form sets a dangerous precedent. In addition, the court argued for jurisdiction by pointing to corporate activities (maintenance of a website, and enforcement of federally registered trademarks) that are too commonplace and too unrelated to a particular forum to be a

basis for jurisdiction. Due process limits on *in personam* jurisdiction, whose boundaries have been outlined but not detailed by this Court in cases such as *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), and *Asahi Metal Indus. Co. v. Superior Ct. of California*, 480 U.S. 102 (1987), are in a state of confusion in the lower courts. Decisions like the one below erode those constitutional limits, and threaten to make it impossible for corporations to predict or affect where in the country they may be haled into court, on any pretext at all. Accordingly, this case presents federal questions of national importance meriting the attention of this Court.

ARGUMENT

On June 15, 2000 the Texas Court of Appeals, Third Appellate Division, upheld a trial court's decision overruling the special appearance and jurisdictional objections of Daimler-Benz AG,[2] a German corporation with no direct U.S. presence, to a product liability suit in connection with a vehicle made for and sold in the European market, but later imported to Texas by the vehicle's owner. The court of appeals' decision, which the Texas Supreme Court declined to review, asserted that Texas courts could maintain "general" *in personam* jurisdiction over the German corporation (that is, jurisdiction even over suits unrelated to any putative Daimler-Benz AG contacts with the forum), by virtue of, *inter alia*, the forum contacts of an indirect, incorporated, separately operated U.S. subsidiary (MBNA).

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[2] Although Daimler-Benz AG has since been succeeded by DaimlerChrysler AG, this brief will continue to use the nomenclature employed by the courts below, which properly focused on the forum contacts of the company as it existed at the time of the suit's filing.

The jurisdictional decision below breaches the limits imposed on Texas' long-arm statute by the Due Process Clause of the Constitution. Those limits have been outlined by this Court in *International Shoe Co. v. Washington,* 326 U.S. 310 (1945), *World-Wide Volkswagen,* and their progeny, but applied inconsistently by the courts below, as the Petition outlines in some detail (*see* Pet. 14, 16-17, 20-21, 29-30). *Amici* agree that that confusion alone warrants the Court's intervention, and they will not repeat the Petitioner's arguments here. *Amici* instead wish to draw the Court's attention to the legal and practical importance of the Texas court's jurisdictional overreaching for national and global businesses. Because the reasoning of the decision below risks extending general jurisdiction over corporate families almost without limit, this case merits the Court's immediate attention.

I. Absent Extraordinary Circumstances, Jurisdictional Analysis Must Respect the Corporate Form

For *amici,* the most troubling aspect of the Texas court's decision at issue here was its novel application of the "alter ego" doctrine to pierce the corporate veil between parent and an indirect subsidiary and impute the admittedly more substantial forum contacts of the subsidiary to its non-resident parent. The court of appeals found the requisite indicia of control in factors so common to the parent/subsidiary relationship as to render vast numbers of non-resident parent companies subject to the general jurisdiction of Texas courts. Should other courts follow Texas' lead, multinational corporations may soon find themselves vulnerable to suit anywhere in the country, even if they themselves do business *nowhere* in the country (other than through separately incorporated subsidiaries).

Imputation of a subsidiary's contacts to a non-resident parent is an extraordinary action, properly limited to those extreme circumstances where a "parent so controls or dominates the subsidiary as to disregard corporate formalities." *Conner v. ContiCarries & Terminals,* 944 S.W.2d 405, 419 (Tex. App. 1997). Absent clear evidence that the corporate separateness of a parent/subsidiary structure is "pure fiction," "the presence of one corporation in a forum state may not be attributed to the other." *Id.* at 420. The court of appeals failed to apply this settled standard of Texas law, which is mirrored in jurisdictions around the country and resonates with this Court's own exacting standards, *see Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 337 (1925) (maintaining corporate veil because separate existence was not "pure fiction").[3]

Conceding that Daimler-Benz AG and its indirect subsidiary MBNA operated as separate companies and "strictly observed corporate formalities," Pet App. at 21a, the court nevertheless found grounds to pierce the corporate veil in the very nature of the parent/subsidiary relationship. Among the factors it found dispositive were:

- The parent company's description of itself in annual reports and financial statements "as the 'managing holding company' of the Daimler-Benz Group" and use of the collective pronouns "our" and "we" when referring to U.S. sales;
- A speech several years earlier by the chairman and CEO of MBNA describing his company as "the organization that links our parent company in Germany and our 320 dealers across the United States";

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[3] The applicability of a federal common law of veil piercing remains an open question. *See United States v. Bestfoods*, 524 U.S. 51, 63 n.9 (1998).

- A statement in a 1993 shareholder report that Daimler-Benz AG "follows and assesses on-going projects of subsidiary companies," without specific reference to MBNA or the United States;
- A contract provision "requir[ing] MBNA to display Daimler-Benz's trademarks";
- An exclusive distribution agreement for the United States market between Mercedes-Benz AG and MBNA that "obligates MBNA to strive for maximum imports and sales of Mercedes-Benz vehicles";
- Provisions in the MBNA distribution agreement governing warranty work and related reporting requirements and recognizing a "common interest" in a corporate identity for the dealer network worldwide.

Daimler-Benz, Pet. App. at 18a-24a.[4] Notably, Daimler-Benz AG did *not* have any traditional contacts with the forum on which jurisdiction could be founded: it was not licensed to do business in the state, it had no employees or agents there, it owned neither owned nor controlled any real or personal property in Texas, and it had no bank accounts, telephone numbers, or mailing addresses there.

The "indicia" of parent company "control" cited by the Texas court to impute MBNA's forum contacts to its indirect German parent company are such common business practices that *amici* find it hard to imagine how in the future *any* non-resident parent corporation with a subsidiary with business dealings in Texas could avoid having the

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[4] The subsidiary here, MBNA, was not even a Texas corporation, but rather a Delaware corporation with its principal place of business in New Jersey that sold vehicles to authorized dealerships throughout the United States, including in Texas.

subsidiary's forum contacts imputed to it. Put simply, the court's judgment was governed not by traditional "alter ego" considerations, but its apparent belief that doing business with a subsidiary ought to make the parent subject to the general jurisdiction of Texas courts.[5] This alternative basis was clearly expressed by the court in the summary paragraph concluding its "alter ego" analysis, which merits quotation at length:

> Our review of the evidence shows Daimler-Benz as a company devoted to selling its cars worldwide, including Texas. To achieve this goal, Daimler-Benz has established subsidiaries in important markets around the globe. *Although Daimler-Benz strictly observes corporate formalities, MBNA essentially connects Daimler-Benz to markets in the U.S., including Texas.* Daimler-Benz holds itself out to investors as a corporation that does business in all corners of the globe. MBNA's classification as a sales company demonstrates that its function is to generate sales for Daimler-Benz. The confusion of identity created by MBNA's use of Daimler-Benz's three-pointed star is some evidence that Daimler-Benz is doing business through MBNA. Daimler-Benz also exercises significant functions for MBNA and its other subsidiaries, such as obtaining financing and coordinating purchasing. Further, the management of Daimler-Benz closely supervises and directs the activities of its subsidiaries. *Thus,*

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[5] U.S. courts routinely reject efforts to assert jurisdiction over non-resident corporations based on sales through wholly-owned subsidiaries. *See, e.g., Jazini v. Nissan Motor Co. Ltd.*, 148 F.3d 181, 184 (2d Cir. 1998) ("a foreign car manufacturer is not 'present' in New York simply because it sells cars through a New York distributor").

> *while formally separate, Daimler-Benz and MBNA form a functional whole in promoting and marketing vehicles in Texas.*

Id. at Pet App. 20a-21a (emphasis added).

A review of the relationship between most other parent and subsidiary companies would produce similar evidence. Under the court's expansive theory of general *in personam* jurisdiction, all such non-resident companies could be compelled to defend themselves in Texas courts, including against suits having no relation to their putative Texas contacts, if they have subsidiaries that do business in the State.

It simply cannot be the case that, solely by virtue of engaging in business of a national or global scope, a corporation forfeits the ability "to structure [its] primary conduct with some minimum assurance as to where the conduct will and will not render [it] liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. If that business is conducted through incorporated subsidiaries, whose separate existence is scrupulously maintained through observance of corporate formalities and is no "fiction" in practice, *Cannon*, 267 U.S. at 337, that legal structure must be respected by the courts. Otherwise, the corporate form—a basic tenet "deeply ingrained in our economic and legal system," *United States v. Bestfoods*, 524 U.S. 51, 61-62 (1998)—becomes meaningless.

Only if the parent company *itself* has "continuous and systematic" contacts with the forum, *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952), can the exercise of general *in personam* jurisdiction over it be deemed reasonable. The Due Process Clause requires no less. *See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (rejecting general jurisdiction over nonresident corporation lacking conventional indicia of presence in forum).

The practical consequences of a contrary holding are severe. As noted, it is difficult to imagine many corporate parent and subsidiary relationships that will not share features—national or global business ambitions, "team" thinking, consolidated financial reporting, licensed trademarks, and contracts between parent and subsidiary—that would apparently subject the parent to general jurisdiction anywhere its subsidiaries operate, however scrupulously separate those operations may be. The result would be to subject much of the national and international business community to general jurisdiction on a nation-wide basis.

That outcome would force companies to shape their business activities in Texas, for example, with an eye toward the risk of suit on any grounds in California or New York—whose legislature and courts may have very different policy priorities—whether or not they actually do business there. That effect is then magnified by the global context of business today. Multinational companies face the prospect that any U.S. subsidiary will become a conduit for unlimited U.S. jurisdiction over the foreign parent—a prospect that may well deter participation in the U.S. market altogether, to the detriment of all concerned.[6] International "reciprocity" also poses risks to U.S. businesses, as courts of other countries could well follow the Texas example and begin to subject U.S. companies to suits in foreign jurisdictions on the thinnest of grounds.

Companies have no defense against these business-hostile tendencies in Texas and other jurisdictions that may follow its lead. They lack the power to "vote with their

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[6] The United States has expressed similar concerns in other cases involving the overextension of general jurisdiction. *See Helicopteros*, 466 U.S. at 425 n.3 (Brennan, J., dissenting) (noting position of United States regarding risks of deterring U.S. purchasing by foreign companies).

feet" and withdraw to other states or countries, because the very nature of jurisdictional overextension is that businesses *cannot* retreat from the reach of the Texas courts. To the contrary, they are increasingly likely to find themselves as defendants there, as Texas and states like it become magnets for forum-shopping plaintiffs looking to obtain jurisdiction over the highest branches (and deepest pockets) in a given corporate family tree.

II. Corporate Conduct Only Loosely Connected to the Forum Cannot Support General Jurisdiction

Similar adverse practical consequences flow from the Texas court's reliance on two additional factors to support general jurisdiction—Daimler-Benz AG's maintenance of a minimally interactive website, and its enforcement of federal trademark rights. Both activities are only loosely connected to the forum, and are so commonplace in business today that to base general jurisdiction on them would be to virtually eliminate jurisdictional boundaries.

Corporate websites are hardly a novelty; they are considered a necessity by most businesses of any scale, as a means of introduction to anyone wishing to know more about them. And rare indeed is a website with no interactivity at all—the "contact us" type of email feature on which the Texas court of appeals in part predicated jurisdiction (because Texas residents could send email to Daimler-Benz AG, even though they could do no business on the site, Pet. App. 25a) is the technological bare minimum that website users have come to expect. To rely on such a feature to establish not merely specific jurisdiction over suits related to such email traffic, but general jurisdiction over the entire company for suits of any nature, is to expand the Texas courts' jurisdiction effectively without limit to corporations around the world.

The court's reliance on trademark enforcement actions by Daimler-Benz AG raises different, but related, concerns. Subsequent to the commencement of this action, Daimler-Benz AG filed suit in federal district court in Texas to enjoin infringement of its federally-registered trademarks by a Dallas car dealer. Under trademark law, Daimler-Benz AG was obliged vigorously to enforce its trademark rights or risk losing them altogether, and had no choice but to do so directly, because its licensees (such as MBNA) using the marks in Texas have no standing to sue for infringement. Moreover, the Texas venue was also obligatory, because the infringement occurred in Dallas. *See* 15 U.S.C. § 1114; 5 McCarthy on Trademarks & Unfair Competition ¶32:3 (1999); *Cottman Transmission Sys. v. Martino*, 36 F.3d 291, 295 (3d Cir. 1994). The court below thus penalized Daimler-Benz AG for defending federally-protected trademark rights in Texas by inflicting on it the general jurisdiction of the Texas courts.

But enforcing a federally registered trademark in federal court in a state is hardly equivalent to purposefully availing oneself of the protection of the laws and courts of that state[7]—much less does it constitute the sort of continuous and systematic contacts necessary to support general jurisdiction. And even setting aside this impairment of federal rights, the court's approach would place control over the jurisdictional exposure of any corporation in the hands of would-be trademark infringers: any time a company moved to halt infringement in a given forum, it would subject itself to general jurisdiction there. Such an

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[7] For similar reasons, it is well-settled that corporate filings with federal regulatory agencies in Washington, D.C. do not suffice to subject the companies to the jurisdiction of the local courts of the District of Columbia. *See, e.g., Fandel v. Arabian Am. Oil Co.*, 345 F.2d 87, 89 (D.C. Cir. 1965).

expansive approach would substantially undermine the Constitution's jurisdictional limits.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully ask this Court to grant the petition for a writ of certiorari to the Texas Court of Appeals, Third Appellate District.

Respectfully submitted,

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